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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : 30th November, 2015

+ **CM(M) 378/2015**

MOOL CHAND Petitioner

Through: Mr.R.K.Shukla, Advocate.

versus

DY DIRECTOR DDA & ANR Respondents

Through: Mr.Vaibhav Agnihotri, Advocate.

PRATIBHA RANI, J. (Oral)

CM(M) 378/2015

1. The petitioner has invoked the extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India praying for setting aside the order dated 26.02.2015 whereby the learned Trial Court directed the petitioner/plaintiff to implead owner/landlord of the suit property and to make necessary pleadings in the suit.

2. I have heard learned counsel for the parties and also gone through the impugned order.

3. The relevant portion of the impugned order dated 26.02.2015 is extracted as under:

“Learned counsel for the plaintiff submits that landlord and the owner of the suit is not a necessary party in the present case.

Since he is a tenant in the suit property, he does not want to implead owner/landlord of the suit property in the present case as there is not (sic no) cause of action against the said owner. Heard.

It is admitted by the counsel for the plaintiff that the plaintiff is not the owner but only is a tenant of somebody else, therefore owner/landlord of the suit property requires to made as a party as his interest are directly effected through the present suit concerning suit property.

In these circumstance, Ld.counsel for the plaintiff is directed to implead the owner/landlord of the suit property and to make necessary pleadings in the present suit by the next date of hearing i.e. 19.03.2015.”

4. Under Order I Rule 10 (2) CPC, at any stage of the proceedings the Court has ample power to strike out the name of any party who has been improperly joined or such person may be joined whose presence before the Court is necessary in order to enable the Court to fully or completely adjudicate upon and settle the questions.

5. The principles governing impleadment as well who is a necessary and proper party, have come up for consideration before the Supreme Court in Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre and Hotels Pvt. Ltd. & Ors. (2010) 7 SCC 417 wherein it was held as under :

8. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any

relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

Court may strike out or add parties.

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely,

effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff.'

6. The scope of power of this Court under Article 227 of the Constitution is not in the nature of appellate jurisdiction and so, the extent and scope of power with this Court is limited and restrictive in nature, and in the normal circumstance, it is exercised where there is want of jurisdiction, error of law or perverse findings by the trial Court. Such power is to be exercised to keep the subordinate court within limits of their jurisdiction and authority and it is not to act as an Appellate Court for correcting the decisions of the subordinate courts. This court would not substitute its opinion or interfere with the findings of the facts of the trial Court, if there was no infirmity or perversity. Thus, in the absence of there being any material illegality or perversity, the order of the court below is not to be faulted with or interfered with by this court in its supervisory power under Article 227.

7. Finding no illegality or perversity in the impugned order, the petition is dismissed.

8. No costs.

CM No.7920/2015 (Stay)

Dismissed as infructuous.

**(PRATIBHA RANI)
JUDGE**

NOVEMBER 30, 2015/‘st’